SRLV

AUTUMN BUDGET 2024

NON-DOMS, TRUSTS AND THE NEW FOREIGN INCOME AND GAINS (FIG) REGIME

November 2024

The Autumn Budget confirmed that the UK's 'non-dom' regime will be replaced with a new residence-based regime from 6 April 2025. SRLV's tax team reviews further details published by the Treasury on how the new rules will work for individuals and trust structures, and their likely effects on current non-UK domiciles, British expatriates and new arrivals to the UK.

The abolishment of the non-dom regime and the changes to the taxation of non-UK trust structures will fundamentally change the UK tax landscape for existing non-UK domiciled individuals and anyone moving to and from the UK.

INDIVIDUALS

INCOME TAX AND CAPITAL GAINS TAX (CGT)

Currently, non-UK domiciled individuals who have been resident for less than 15 out of the past 20 tax years can use the 'remittance basis' of taxation, so that their foreign income and gains (FIGs) are not subject to income tax/CGT, unless transferred to the UK (directly or indirectly). The remittance basis will be abolished from 6 April 2025.

From this date, individuals will either be subject to tax on the 'arising basis' (i.e. subject to UK tax on their worldwide income), or qualify to make a claim as part of a new 'four-year FIG regime'. This regime means that individuals, who have been non-UK resident for ten consecutive years prior to arriving to the UK, will not be subject to income tax/CGT on their FIGs (whether remitted to the UK, or not) for four tax years.

Individuals will be able to designate certain non-UK income and gains to be outside the four-year FIG regime, allowing them to take a foreign tax credit against certain FIGs, if this is more beneficial for them. It will also be possible for individuals to switch between the four-year FIG regime and the 'arising basis', as preferred, during their first four years of residency. Some foreign income and gains will not be eligible for the new FIG regime; for example, chargeable event gains from offshore life insurance policies/bonds.

TRANSITIONAL CONCESSIONS

To help non-UK domiciled individuals transition to the new system, the government has provided some concessions:

The Temporary Repatriation Facility (TRF) – where individuals have been taxed on the remittance basis previously, they will be able to bring their untaxed historic foreign income and gains into the UK at a reduced rate of tax for the first three years of its introduction. Individuals will be able to designate the FIG they want to bring into the UK and pay a Temporary Repatriation Facility (TRF) charge. It will also be possible to designate the benefit received from a 'qualifying overseas trust structure' as subject to the TRF charge. If individuals make the designation during 2025/26 or 2026/27, the charge will be set at 12%. If they designate it during 2027/28, it will be set at 15%. It won't be possible to claim a foreign tax credit against the TRF charge; however, once paid, the individual can bring the funds into the UK at any time.

Rebasing – where individuals have previously used the remittance basis, they can rebase their foreign assets to their value as of 5 April 2017, subject to certain conditions.

> "WHERE INDIVIDUALS HAVE BEEN TAXED ON THE REMITTANCE BASIS PREVIOUSLY, THEY WILL BE ABLE TO BRING THEIR UNTAXED HISTORIC FOREIGN INCOME AND GAINS INTO THE UK AT A REDUCED RATE OF TAX FOR THE FIRST THREE YEARS OF THE FIG REGIME."

OVERSEAS WORKDAY RELIEF (OWR)

The OWR rules have also been modified. Where employees perform all or some of their duties overseas, they can claim tax relief on remuneration relating to non-UK duties. From 6 April 2025, OWR will be available for four years (rather than three) to align with the FIG regime. If individuals are already in the UK and do not qualify for the FIG regime but do qualify for OWR, then the current three-year availability period will stay in place. From 6 April 2025, OWR will have an upper limit, either £300,000 or 30% of relevant employment earnings, per tax year (whichever is lower).

INHERITANCE TAX (IHT)

IHT was previously determined with reference to an individual's 'domicile' status, but from 6 April 2025, it will move to a residence-based system. The Treasury's technical note refers to individuals who are resident in the UK for at least 10 years out of the preceding 20 tax years as a 'long-term resident' (LTR). An LTR will usually be subject to UK IHT on their worldwide assets.

The length of time an LTR individual remains subject to UK IHT (on non-UK assets) after leaving the UK will depend on the number of years that the individual qualified as an LTR. Qualification as an LTR begins after spending 10 years out of the preceding 20 as UK tax resident. So, if the individual has been an LTR for three years when they leave the UK (due to 13 years of UK tax residency in the previous 20), they will have a three-year IHT 'tail', rising to a ten-year IHT tail if they have been an LTR for 20 or more tax years. The reduction in the IHT tail length appears to be a significant government concession when compared to their previous plan of a blanket 10-year IHT tail for LTRs, this impacts the IHT due on death, as well as the seven-year lifetime gifting rules.

There are some complexities when it comes to mixed LTR/non-LTR marriages, and the technical note seems to confirm that the operation of UK-India and UK-Pakistan IHT double tax treaties will not be affected, which is good news for clients who are resident in the UK but domiciled in India or Pakistan.

TRUST STRUCTURES

INCOME AND GAINS

Foreign income and gains in trust structures, which are settlor-interested, will be automatically attributed to the settlor, exposing them to UK income tax/CGT, unless they are eligible for the FIG regime, are deceased, or are non-UK resident.

Where individuals have trusts with pre-6 April 2025 foreign income and gains, matching rules will still apply, unless the FIG regime is claimed.

Existing structures should be reviewed to see how they might be affected, and whether steps can be taken to improve the position, for example, changing the beneficiaries and/or changing the investment approach, or restructuring.

INHERITANCE TAX (IHT)

Currently, where a non-UK trust is established by a non-UK domiciled individual and it holds non-UK situated assets only, it is known as an 'excluded property trust', and it is broadly exempt from UK Inheritance tax (IHT charges). Post 6 April 2025, assets held in a trust will only be considered 'excluded property' if the settlor is not a long-term resident (LTR). Where a potential IHT chargeable event occurs (such as an 'exit charge' or a 10-year anniversary charge), the settlor's position is tested and the trust may move into and out of the scope of UK IHT as the settlor's LTR status changes. In effect, this could mean IHT charges of up to 6% every ten years, when assets leave the trust, and when the settlor stops being an LTR.

However, trusts in existence prior to 30 October 2024 (the date of the Autumn Budget) will not generally be caught by the 'gift with reservation of benefit' (GWROB) rules which can deem that trust assets remain part of the settlor's estate on their death (liable for up to 40% IHT), in addition to the ten-year charges (up to 6%). Unfortunately, trusts established post 30 October 2024 (or existing trusts funded after 30 October 2024) can fall within the scope of GWROB rules (in addition to the ten-year charge regime), if the settlor can benefit from the trust and they are a LTR, which is far from ideal.

If the settlor passes away, the status of the trust will depend on whether they were a LTR at the time of their death.

THE NEW RULES SHOULD MAKE THE UK A VERY ATTRACTIVE PLACE FOR NEW NON-UK DOMICILES TO RELOCATE IN THE SHORT-TERM – THEY WILL BE EXEMPT FROM UK TAX ON THEIR FOREIGN INCOME AND GAINS FOR THE FIRST FOUR YEARS. THE NEW REGIME ALSO LOOKS QUITE FAVOURABLE FOR A LARGE NUMBER OF RETURNING BRITISH EXPATS."

Kieron Clement-Smith
Director

HOW WE CAN ASSIST

The proposals for how the new FIG regime will work are currently under review so are subject to change. However, if passed in their current form, they will make the UK a very attractive place for new non-UK domiciles to relocate short-term and gain 100% tax relief on foreign income and capital gains for their first four years of their residency. Whilst the effects of the new regime will be positive for new arrivals and returning British expatriates, they will be fairly unfavourable to others, particularly longer-term non-UK domiciled individuals with offshore trust structures.

The new rules will take effect from 6 April 2025, so the time to seek advice is now. If you are affected by these changes, please get in touch with one of our specialist advisors who can advise you on how to best navigate your next steps.

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SPECIALIST CONTACTS

STEVE WREN
PARTNER

E steve.wren@srlv.co.uk
T +44 (0) 20 7079 8888

JANICE LLOYD
PARTNER

E janice.lloyd@srlv.co.uk
T +44 (0) 20 7079 8888

GAVIN LENTHALL
PARTNER

E gavin.lenthall@srlv.co.uk
T +44 (0) 20 7079 8888

TINA SUNDERLAND
PARTNER

E tina.sunderland@srlv.co.uk
T +44 (0) 20 7079 8888

KIERON CLEMENT-SMITH
DIRECTOR

E kieron.clement-smith@srlv.co.uk
T +44 (0) 20 7079 8888

TOM BUCHAN
SENIOR INTERNATIONAL TAX MANAGER

E tom.buchan@srlv.co.uk
T +44 (0) 20 7079 8888

SRLV LLP

4th Floor Elsley Court
20-22 Great Titchfield Street
London, W1W 8BE

T +44 (0) 207 079 8888 I E hello@srlv.co.uk

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